

Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549

Subject: Request for Status Update - Administrative Proceeding No. 3-20639

March 21, 2025

Office of the Secretary U.S. Securities and Exchange Commission 100 F Street NE Washington, D.C. 20549

Re: Administrative Proceeding No. 3-20639 (DreamFunded Marketplace, LLC and Manuel Fernandez)

Dear Office of the Secretary,

I am writing to formally request a status update regarding Administrative Proceeding No. 3-20639, involving DreamFunded Marketplace, LLC and myself, Manuel Fernandez. The last Order Extending Time to Issue Decision, Release No. 34-101026, was dated September 16, 2024, extending the decision deadline to December 16, 2024. As this date has passed without any additional information or a final ruling, I kindly request clarification on the current status and expected timeline for the decision. This missed deadline further exacerbates the uncertainty and ongoing damage to my professional reputation.

The prolonged delay in issuing a decision has significantly harmed my professional reputation, my ability to engage in legitimate business activities, and infringes upon my constitutional rights, including my right to due process and a timely resolution of this matter. Prompt resolution is essential to mitigate further unnecessary damage.

Additionally, given the recent U.S. Supreme Court decision in SEC v. Jarkesy, I believe this matter warrants expedited consideration.

In response to FINRA's Supplemental Brief dated December 20, 2024, I submit the following reply to be included as part of this formal request:

## I. Introduction

This Reply addresses FINRA's December 20, 2024, Supplemental Brief, which disputes the applicability of the Seventh Amendment to its disciplinary proceedings and the retroactive application of SEC v. Jarkesy (144 S. Ct. 2117, 2024). FINRA's arguments fail to address the core constitutional principles at issue and mischaracterize both its role as a self-regulatory organization (SRO) and the procedural deficiencies in its disciplinary process.

## II. FINRA as a De Facto State Actor

1. Regulatory Oversight by the SEC: FINRA operates under extensive SEC oversight and approval, making it a de facto government actor. As established in *Lugar v. Edmondson Oil Co.* (457 U.S. 922, 1982), private entities performing regulatory functions traditionally reserved for the government are subject to constitutional constraints. FINRA's role in enforcing securities laws and imposing industry-wide sanctions fits this criterion.
2. Public Function Test: FINRA's disciplinary actions, which effectively bar individuals from participating in a regulated industry, are indistinguishable from actions typically carried out by governmental agencies. This is consistent with the reasoning in *Malouf v. SEC* (933 F.3d 1248, 2019), where the Tenth Circuit recognized the SEC's direct oversight of FINRA's enforcement actions.

### III. The Applicability of *SEC v. Jarkesy*

1. Punitive Nature of FINRA's Sanctions: The lifetime industry bar imposed on me is clearly punitive, aligning it with the civil penalties discussed in *Tull v. United States* (481 U.S. 412, 1987) and *Jarkesy*. These sanctions are designed to deter and punish, not merely regulate or remediate.
2. Retroactivity of *Jarkesy*: FINRA asserts that *Jarkesy* does not apply retroactively, but this contradicts well-established constitutional principles. In *Harper v. Virginia Dept. of Taxation* (509 U.S. 86, 1993), the Supreme Court held that constitutional decisions apply retroactively to all cases not yet final. Denying retroactivity here would create an inequitable system where similarly situated defendants are treated differently based solely on timing.

### IV. Procedural Deficiencies in FINRA's Disciplinary Process

1. Lack of Discovery: FINRA's rules severely restricted my ability to gather evidence and depose key witnesses, denying me a fair opportunity to mount a defense. Such limitations would be unacceptable in a court of law.
2. Admissibility of Hearsay Evidence: FINRA allowed hearsay evidence that would have been inadmissible under the Federal Rules of Evidence. This undermines the reliability of its proceedings and further demonstrates the need for judicial oversight.
3. Impartiality Concerns: FINRA acted as investigator, prosecutor, and adjudicator, raising serious questions about the impartiality of its process. This lack of separation of powers violates fundamental due process principles.

### V. FINRA's Contractual Waiver Argument

FINRA contends that I voluntarily waived my right to a jury trial by becoming a member. However, constitutional rights—particularly those guaranteed by the Seventh Amendment—cannot be waived through general membership agreements. Waivers must be clear, knowing, and voluntary, and cannot override fundamental protections.

### VI. Relief Requested

1. Vacate FINRA's Decision: Based on the constitutional violations outlined above, I respectfully request that the SEC vacate FINRA's disciplinary decision.
2. Order a New Hearing: Alternatively, the SEC should remand the case for a new hearing in a federal court with Article III protections, including the right to a jury trial.
3. Procedural Reforms: The SEC should require FINRA to adopt procedural safeguards, such as full discovery rights and stricter evidentiary standards, to ensure fairness in future proceedings.

## VII. Conclusion

FINRA's arguments fail to adequately address the constitutional and procedural issues raised in my case. The Supreme Court's decision in *Jarkesy* underscores the importance of procedural fairness and the fundamental right to a jury trial in punitive cases. I respectfully urge the SEC to grant the relief requested to uphold the principles of fairness, due process, and constitutional integrity.

Thank you for your immediate attention to this request.

Respectfully,

/s/ Manuel Fernandez

Pro Se

[REDACTED]

[REDACTED]

Plaintiff